

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1479

Highway Safety and Motor Vehicles

SPONSOR(S): Burgin

TIED BILLS:

IDEN./SIM. BILLS:

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Roads, Bridges & Ports Policy Committee		Brown	Miller
2)	Economic Development & Community Affairs Policy Council			
3)	Transportation & Economic Development Appropriations Committee			
4)	Full Appropriations Council on Education & Economic Development			
5)				

SUMMARY ANALYSIS

HB 1479 contains numerous changes to highway safety and motor vehicle laws administered by the Department of Highway Safety and Motor Vehicles (DHSMV). Examples of major provisions in the bill include:

- Eliminating the DUI Programs Coordination Trust Fund and providing that DHSMV may use the Highway Safety Operating Trust Fund to collect DUI program revenue;
- Requiring vehicles to slow down on multi-lane roads when the driver cannot safely change lanes as otherwise required by the "Move Over Act;"
- Clarifying certain issues regarding minors' ability to operate motorcycles or mopeds;
- Increasing certain late fees levied on unpaid traffic infractions;
- Allowing DHSMV to charge an additional fee for multiple physical exams of certain custom or kit cars;
- Allowing DHSMV to use issue electronic certificates of title for vehicles and vessels, and to use e-mail addresses for certain notifications;
- Providing for the settlement of a potential class-action lawsuit filed against DHSMV;
- Authorizing DHSMV to provide public access to a national vehicle title database maintained by the U.S. Department of Justice;
- Addressing licensing of motor vehicle dealers and manufacturers, specifically relating to insurance and surety bond requirements, suspensions, and the costs of certain dealer publications;
- Phasing out "valid in Florida only" licenses, and ensuring that applicants cannot have more than one REAL ID-compliant identification card;
- Removing a requirement that certain traffic school instructors be certified by DHSMV;
- Permitting DHSMV to cancel identification cards obtained by fraud, or if the applicant fails to pay required fees;
- Clarifying the legislative intent with regarding to DHSMV hearing officers' ability to consider the lawfulness of an arrest, in a license suspension hearing; and
- Allowing certain petitioners for driver's license re-instatement to avoid a hearing, if other requirements are met and the underlying offenses were "non-egregious."

Some of the bill's provisions are technical or administrative in nature and will have no fiscal impacts. Some of the provisions are expected to have an indeterminate fiscal impact on state government and the private sector. See the Fiscal Analysis and Economic Impact sections of this analysis for details.

The bill takes effect July 1, 2009.

(The sponsor intends to file a strike-all amendment. Please see Drafting Issues or Other Comments in Section IV for details on significant changes made by the amendment.)

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

DUI Programs Coordination Trust Fund (Sections 1, 2, 3, 33)

Current Situation

Currently, a specific trust fund exists to collect and disburse funds necessary to perform the requirements of s. 322.292, F.S., relating to the DHSMV Bureau of Driver Education and DUI Programs. Pursuant to s. 322.293, F.S., the DUI Programs Coordination Trust Fund is administered by DHSMV and collects fees from DUI Programs and offenders. The revenue collected in the trust fund is retained by the Department to be used solely for the purposes set forth in s. 322.292, F.S.¹

Proposed Legislation

The bill amends s. 322.293, F.S., to eliminate the DUI Programs Coordination Trust Fund. Section 36 directs those revenues to be deposited into the Highway Safety Operating Trust Fund for uses by both DUI programs and general operations of the Department. The bill also amends s. 17.61, F.S., and 215.20, F.S., eliminating references to the trust fund.

"Move Over Act" (Section 4)

Current Situation

In 2002, the Legislature created the "Move Over Act,"² requiring drivers on a multi-lane road to move out of the lane nearest an emergency vehicle or wrecker, and requiring drivers on a single-lane road to slow to 20 miles-per-hour. The act is intended to provide additional safety to persons involved in, or responding to, emergencies on the roadside.

Proposed Legislation

There is a possibility that a driver on a multi-lane road may be unable to shift lanes as required under current law. In these situations, the bill amends s. 316.126, F.S., directing motorists to slow down on a four-lane highway if they are unable to move over, as drivers on a single-lane road are required to do under the current law.

Motorcycles/Mopeds (Section 5)

Current Situation

Section 316.003(77), F.S., and s. 320.01(28), F.S. specifically define a "moped" as:

¹ S. 322.293(1), F.S.

² 2002-217, Laws of Florida.

Any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels; with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground; and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters.

The current definitions of “motor vehicle” and “motorcycle” each specifically exclude a “moped.”³ Section 316.2085(6), F.S., states that a person under 16 years of age may not rent a motorcycle or a moped, or operate a motorcycle that has a motor with more than 150 cubic centimeters displacement.”

Proposed Legislation

The bill amends s. 316.2085, F.S., removes the reference to 150 cubic-centimeter engine displacement, and clarifies that a person under 16 may operate neither a motorcycle nor a moped.

Reinstatement Fees (Section 7)

Current Situation

Section 318.18, F.S., provides the general penalty amount for numerous traffic infractions and criminal violations. The section also provides for additional civil penalties of \$12 for failure to pay a required fine within 30 days. \$9.50 of the fee is directed to the Highway Safety Operating Trust Fund, and the remaining \$2.50 is directed to the General Revenue Fund.

Proposed Legislation

The bill increases the civil penalty late fee required in s. 318.18, F.S., from \$12 to \$16. The bill directs all of the additional \$4 to the Highway Safety Operating Trust Fund.

Certificates of Title; Custom Vehicles and Street Rods (Sections 6, 8, 9, 15, 17)

Current Situation

Chapter 319, F.S., “Title Certificates” defines various types of vehicles and various titling requirements related to different types of vehicles. Section 319.14, F.S., defines several different categories of vehicle, e.g., “police vehicles,” “lease vehicles,” “rebuilt vehicles,” “assembled from parts” vehicles, “kit cars,” “glider kits,” “replicas,” and “flood vehicles.”⁴ DHSMV is required to physically examine many of these types of vehicles in order to ensure that they are titled accurately.⁵ Section 319.32(1), F.S., authorizes DHSMV to charge a one-time \$40 fee when titling the vehicle requires a physical examination, in addition to other titling fees required for all vehicles.

If an applicant for a certificate of title is unable to provide adequate information, or if the original examination does not satisfy titling requirements, the applicant may bring the vehicle in for subsequent examinations at no additional expense. In Fiscal Year 2007-2008, DHSMV conducted approximately 25,000 inspections, of which approximately 5,000 required a subsequent re-inspection.⁶

Chapter 320, F.S., “Motor Vehicle Licenses,” addresses requirements necessary for operators to receive license plates for various types of vehicles. Section 320.0863, F.S., defines “custom vehicle” and “street rod,” and provides vehicle license requirements for those types of vehicles.

Proposed Legislation

The bill moves the definitions of “custom vehicle” and “street rod” from s. 320.0863, F.S., to 319.14, F.S., to better conform to the structure of each chapter of the Florida Statutes. “Custom vehicle” and “street rod” are also added to the list of vehicles requiring a physical examination under s. 319.32(1)(b), F.S.

³ S. 366.003(21)-(22), F.S.

⁴ S. 319.14(1)(c), F.S.

⁵ S. 319.14(1)(b), F.S.

⁶ *Agency Bill Analysis: HB 1479*, Department of Highway Safety and Motor Vehicles, March 14, 2009.

The bill also authorizes DHSMV to charge \$20 for additional inspections of a vehicle required to have a physical inspection, if the applicant was unable to provide adequate information during the initial inspection.

E-mail Addresses and Electronic Certificates of Title (Section 10, 22, 35, 37)

Proposed Legislation

The bill amends ss. 319.40 and 328.30, F.S., authorizing DHSMV to issue electronic certificates of title, and use e-mail addresses as a notification method in lieu of the United States Postal Service for vehicles and vessels, respectively. The bill also amends ss. 320.95, F.S. and 328.80, F.S., authorizing DHSMV to use e-mail addresses for the purpose of sending notifications to its customers.

Motor Vehicle Registration Voluntary Check-off (Section 11)

Current Situation

Section 320.023, F.S., details the requirements with which a non-profit entity must comply in order to be listed as a "voluntary checkoff" organization on motor vehicle applications. These requirements, which include a \$10,000 application fee and both long- and short-term marketing strategies to be reviewed by DHSMV, must be met before the Legislature independently approves the organization's inclusion on applications. Section 320.023(5)(c)F.S., provides that "any voluntary contributions authorized by law shall only be distributed to an organization under an appropriation by the Legislature."

Proposed Legislation

The bill amends s. 320.023(5)(c), F.S., to state that voluntary contributions must be "deposited into and distributed from the Motor Vehicle License Clearing Trust Fund."

Collier v. Dickinson Settlement (Section 12)

Current Situation

DHSMV is in the process of negotiating a settlement in the case of *Mary Ann Collier, et al. v. Dickinson, et al. Case No. 04-21351-DV-JEM (S.D. Fla.)* A potential settlement agreement has been reached, contingent on required approval by the Florida Legislature of the vehicle registration credit.

This potential class action, filed on June 7, 2004, names present and former employees of DHSMV as defendants and alleges the continued disclosure of personal information maintained by DHSMV obtained from motor vehicle and driver license records in violation of the federal Driver Privacy Protection Act (DPPA). The federal DPPA was effective June 1, 2000. Florida law allowed the disclosure of this information from June 1, 2000 until September 30, 2004 when s. 119.0712(2), F.S., was amended to mirror DPPA. The above legal action led to the change in Florida law.

The initial complaint demanded approximately \$39 Billion in liquidated damages (\$2,500 per release of information). Each of the three named Defendants is represented by attorneys appointed through the Department of Financial Services, Division of Risk Management.

There were three separate mediation sessions. The mediated agreement reached on June 5, 2008 provides that all motor vehicle registrants who are class members (all natural persons who had a valid driver license, identification card or motor vehicle registration) would receive a \$1 credit on the renewal of their motor vehicle registration during the period of July 1, 2009 through June 30, 2010. The total amount of the credit would be approximately \$10.4 million. This credit mechanism must be approved by the Florida Legislature. There will also be equitable relief which includes changing the procedures of DHSMV regarding disclosure of personal information. Additionally, the Department will maintain a website informing the public of their rights under the DPPA.

The Division of Risk Management would pay each of the four named Plaintiffs \$3,000, Plaintiffs' attorney fees in the amount of \$2.85 million and costs of publication totally approximately \$20,000.

Proposed Legislation

The section provides that all natural persons holding a Florida driver's license, identification card or motor vehicle registration between June 1, 2000 and September 30, 2004 are eligible for a single \$1 credit on a new or renewed vehicle registration between July 1, 2009 and June 30, 2010.

Record Access (Section 13)

Current Situation

The National Motor Vehicle Title Information System (NMVTIS) is a system that allows an electronic means to verify and exchange data among motor vehicle administrators, law enforcement officials, prospective purchasers, and insurance carriers. Maintained by the United States Department of Justice, NMVTIS also allows state titling agencies to verify the validity of ownership documents before they issue new titles. NMVTIS checks to see if the vehicle is reported stolen, and if so, the states will not issue the new titles. Brands, which are descriptive labels regarding the status of a motor vehicle, such as "junk," "salvage," or "flood," are not lost when the vehicle travels from state to state, because NMVTIS keeps a history of all brands ever applied by any state to the vehicle.⁷

NMVTIS allows:

- State titling agencies to prevent fraudulent use of a title document by verifying the vehicle and title information, information on all brands ever applied to a vehicle, and information on whether the vehicle has been reported stolen-all prior to the titling jurisdiction issuing a new title. The vehicle identification number (VIN) is checked against a national pointer file, which provides the last jurisdiction that issued a title on the vehicle and requests details of the vehicle from that jurisdiction. The details include the latest odometer reading for the vehicle. Verification of this data will allow for a reduction in the issuance of fraudulent titles and a reduction in odometer fraud. Once the inquiring jurisdiction receives the information, it can decide whether to issue a title; if so, NMVTIS notifies the last titling jurisdiction that another jurisdiction has issued a title. The old jurisdiction can then inactivate its title record. This will allow jurisdictions to identify and purge inactive titles on a regular basis.
- Law enforcement to create lists of vehicles, by junk yard, salvage yard, or insurance carrier that are reported as junk or salvage. The Anti-Car Theft Improvements Act of 1996 requires junk yards, salvage yards, and insurance carriers to report monthly to NMVTIS on all junk and salvage vehicles obtained. Law enforcement inquiries will allow it to use NMVTIS to further its investigations of vehicle theft and fraud.
- Consumers to access information on the vehicle's current title, including brands and odometer, prior to purchasing the vehicle. This allows the consumer to make a better-informed purchase.⁸

Florida, along with 12 other states, fully utilizes the NMVTIS by providing data to the system, as well as querying the system for vehicle data. Fourteen states feed data into the system but do not currently query the system for information.⁹ The system is not currently accessible to the general public in Florida.

Proposed Legislation

The bill amends s. 320.05, F.S., authorizing DHSMV to provide public access to the NMVTIS via an authorized connection with the American Association of Motor Vehicle Administrators. This will allow Floridians to obtain vehicle history and branding data on out-of-state vehicles.

Final rules have recently been published regarding NMVTIS and personal identifying information.¹⁰ According to the final rule, "NMVTIS will not provide personal information in the NMVTIS central file to

⁷ The U.S. Department of Justice claims that NMVTIS is dramatically reducing motor vehicle fraud by retaining this data across states. Because states do not use a uniform system of brands, a vehicle labeled "flood" (for example), could be re-titled in a state that uses a different designation for such cars, e.g. "junk." As a result of the mismatch, the title could be "washed," and a consumer would be unaware that the vehicle was flooded at one time. Additional information regarding branding is available at the USDOJ website <http://www.nmvtis.gov>. Last visited March 16, 2009.

⁸ *Id.*

⁹ Participating states are listed on the American Association of Motor Vehicle Administrators' website covering NMVTIS participation: <http://www.aamva.org/TechServices/AppServ/NMVTIS/JurisdictionParticipation.htm>. Last visited January 23, 2009.

¹⁰ Federal Register, January 30, 2009 (Volume 74, Number 19)

individual prospective purchasers and may not provide access to any other type of user without securing DOJ approval of such access.”

License Plate Fees (Section 14, 16)

Current Situation

In 2007, HB 275 increased replacement license plate fees from \$10 to \$12. The Legislature failed to amend cross-references to these fees in ss. 320.0607 and 320.08048, F.S.

Proposed Legislation

The bill corrects the additional references to license plate fees which were not corrected when changed in HB 275 from the 2007 session.

Motor Vehicle and Mobile Home Dealer Licensing (Section 19, 20, 21)

Chapter 320, F.S., provides for the licensing of motor vehicle dealers and motor vehicle manufacturers, distributors, and importers, and also regulates numerous components of the franchise contracts they enter into to do business in the state of Florida.

Current Situation - Insurance

Subsection (3) of s. 320.27, F.S., contains detailed requirements for motor vehicle dealer licensing. Among other application requirements, a potential dealer must provide evidence to DHSMV that it has obtained a garage liability insurance policy or general liability insurance policy coupled with a business automobile policy.¹¹ The limits of the policy must be at least \$25,000 combined single-limit including bodily-injury and property damage protection, and \$10,000 personal injury protection. Proof of a new or continued policy must be delivered to DHSMV annually.

Proposed Changes - Insurance

The bill deletes the insurance provisions from subsection (3) of s. 320.27, F.S., and creates a new subsection (11) for insurance. It also adds additional requirements to those being moved. The language continues to require franchised dealers to provide annual proof of a garage liability policy, with the same limits of liability. It requires other dealers to provide proof of either a garage liability policy or a general liability policy coupled with a business auto policy. DHSMV retains its power to approve the form in which dealers provide proof of these policies.

The bill provides that proof of liability insurance must be made to DHSMV, and “in favor of any person in a retail or wholesale transaction who suffers any loss....” DHSMV must notify such injured persons of the existence of the dealer’s liability insurance, if DHSMV determines that the person has incurred a loss.

HB 1479 provides that the insuring company must be authorized to do business in Florida, and that DHSMV shall notify the insurer if the dealer’s license is denied, revoked, or suspended. The company must notify DHSMV of all claims paid under the policy. The company must notify DHSMV if it intends to cancel the insurance coverage of a dealer, and cancellation is effective no sooner than 30 days after the notice is received by DHSMV.

The bill provides that DHSMV shall revoke, suspend, or deny the license of any dealer who conducts business during the license period without an insurance policy that complies with the subsection.

These garage liability requirements are re-created in s. 320.77, F.S., for dealers who sell both mobile homes and recreational vehicles.

Current Situation - Suspension

¹¹ Franchise dealers must provide proof of a garage liability policy.

Subsection (9) of s. 320.27, F.S. contains detailed violations for which DHSMV may deny, suspend, or revoke a motor vehicle dealer's license. For matters of fraud, misrepresentation, felony convictions, and passing bad checks to other motor vehicle dealers, DHSMV may deny, suspend, or revoke "upon proof that a licensee has committed" the act described. For other matters, DHSMV must not only have proof that the act was committed, but must prove a "pattern of wrongdoing." These violations include:

- Misrepresenting "demo" vehicles as new;
- Unjustifiable refusal to perform certain warranty work;
- Misleading or false statements regarding sales or financing information;
- Failure to provide customers with odometer disclosure statements, sales, contracts, or other documents;
- Failure to comply with the terms of written agreements;
- Failure to apply for title appropriately;
- Use of a dealer's identification number by another;
- Failure to "continually meet the requirements of the licensure law;"
- Representation of a vehicle as new, to a customer who cannot lawfully take title to the vehicle based on an MSO;
- Forcing unwanted equipment on a customer's purchased vehicle;
- Requiring customers to use specific financing companies;
- Requiring customers to contract with the dealer for "physical damage insurance;"
- Misrepresentation of a franchise's relationship with a manufacturer, importer, or distributor;
- Violations of section 319.35, F.S. regarding odometer tampering;
- Reselling a customer's "trade-in" vehicle to a second customer, before the first exchange is lawfully completed;
- Willful failure to comply with administrative rules of the Department;
- Violations of Chapter 319 (Title Certificates), Chapter 320 (Motor Vehicle Licenses), certain provisions regarding motor vehicles and mobile homes in Chapter 559,¹² or violations of certain federal customer-disclosure requirements;
- Failure to maintain evidence of fees owed to the Department by new owners; and
- Failure to register a mobile home salesman.

Proposed Changes - Suspension

The bill amends subsection (9) of s. 320.27, F.S., allowing the Department to sanction a dealer for failing to honor a bank draft given to DHSMV, as well as the current sanction for failing to honor a bank draft to another motor vehicle dealer.

HB 1479 also adds a 20th violation to the list of violations that require proof of a pattern of wrongdoing: failure of the dealer to obtain an off-premises permit (a requirement contained in s. 320.27(5), F.S.).

Current Situation - Surety Bonds

Subsection (10) of s. 320.27, F.S., requires motor vehicle dealers to annually provide DHSMV with surety bonds or irrevocable letters of credit in the amount of \$25,000. Similar requirements apply to mobile home dealers under s. 320.77, F.S. The subsection contains requirements that the surety company must meet certain criteria, and that DHSMV shall notify the surety if a licensee has its license suspended or revoked. It also requires the surety company to notify DHSMV if the surety or bank cancels the licensee's bond or letter of credit.

Proposed Changes - Surety Bonds

Similar to the insurance requirements above, the surety bond provisions in s. 320.27(10), F.S., are modified to provide that insurers must give written notice to DHSMV before cancelling a motor vehicle dealer's bond. The cancellation is not effective until 30 days after receipt of the notice by DHSMV, and DHSMV shall deny, suspend, or revoke the license of any dealer conducting business during the license period without having a bond in place.

Current Situation - Dealer Publications

¹² Sections 559.901 – 559.9221, F.S.

Section 320.642, F.S., requires DHSMV to publish certain dealer-related notices in the Florida Administrative Weekly, relating to dealers' applications to relocate or establish certain dealerships. The current statute does not address the cost of such notification.

Proposed Changes - Dealer Publications

The bill amends s. 320.642, F.S., to require a franchised motor vehicle dealer seeking to open a new point of sale or seeking a relocation of their current franchise to pay a \$75 fee and a service charge of \$2.50 for each publication to cover the cost of publication in the Florida Administrative Weekly.

REAL ID Issues (Sections 23, 24, 25)

Current Situation

On May 11, 2005, President Bush signed into law the REAL ID Act of 2005.¹³ Title II of the Act "directly imposes prescriptive driver's license standards."¹⁴ The REAL ID Act contains a provision regarding the verification of documents presented to a license-issuing state agency.¹⁵ States must verify with all issuing agencies the issuance, validity, and completeness of all documents presented. The receiving state also must verify a social security number, if given, with the Social Security Administration.

Basic driver's license standards also are contained in the act.¹⁶ All licenses must contain the person's name, date of birth, gender, license number, digital photograph, and legal address and physical security features to prevent fraud or counterfeiting and a common machine-readable technology with defined data elements. The REAL ID Act also prohibits customers from holding two REAL ID compliant documents simultaneously

Proposed Legislation

The bill amends s. 322.03, F.S., to phase out "valid in Florida only" driver's licenses, as required by the REAL ID Act. Specifically, this section allows a part-time resident issued a "valid in Florida only" license to continue to hold such license until the next regularly scheduled renewal. Licenses identified as "valid in Florida only" may not be issued or renewed effective July 1, 2009. This provision explicitly expires June 30, 2017.

The bill makes a technical correction regarding ID Card fees in s. 322.051, F.S.¹⁷

The bill amends s. 322.08, F.S., to specify that the Department of Highway Safety and Motor Vehicles shall not issue a driver license or ID card to anyone holding a valid driver license or ID card issued by another state, eliminating the possibility of holding two or more REAL-ID compliant identification cards.

Traffic Law & Substance Abuse Education Courses (Section 26)

Current Situation

Chapter 488, Florida Statutes, requires all commercial driving schools and their instructors to obtain a license from DHSMV in order to operate in Florida. The license requirements for instructors include "special eye tests, written tests, and road tests, and to furnish proof of his or her qualifications and ability as an instructor."¹⁸

Section 318.1451, F.S., authorizes any person to engage in the business of operating a "driver improvement school," so long as the school offers "department-approved courses." Section 322.095, F.S., authorizes approved DUI programs¹⁹ to offer traffic law and substance abuse education (TLSAE) programs. DHSMV must "contract for an independent evaluation" of the courses, and must conduct

¹³ H.R. 1268, Public Law 109-13.

¹⁴ *NCSL REAL ID Act of 2005 Title Summary*, report from the National Conference of State Legislators, 2005.

¹⁵ See generally, REAL ID Act, s. 202(c)(3)(A), s. 202(d)(4), and s. 202(d)(5).

¹⁶ See generally REAL ID Act, s. 202(c) and (d).

¹⁷ Identification card fees were moved from s. 322.051, F.S., to 322.21, F.S., during the 2008 session; however, one partial sentence was mistakenly left in the original section.

¹⁸ Section 488.04(1), F.S.

¹⁹ See ss. 316.193(5) and 322.292, F.S.

financial audits of the fees charged by course providers.²⁰ DHSMV licenses both driver-improvement and TLSAE schools under Chapter 488, F.S., but does not “certify” the schools.²¹

Section 322.095, F.S., requires DHSMV to “certify” TLSAE instructors; however, no criteria are given. DHSMV suggests that this sentence was mistakenly left in the statutes in 1995, when the driving-school industry was de-regulated and statutory provisions regarding certification were removed.²²

Proposed Legislation

The bill amends s. 322.095, F.S., eliminating the requirement that the individual instructors teaching these courses must be “certified” by DHSMV. Instructors and schools continue to be licensed pursuant to Chapter 488, F.S.

Identification Card Obtained by Fraud (Sections 28, 30)

Current Situation

Sections 322.22, F.S., and 322.27, F.S., contain provisions for DHSMV cancellation of driver’s licenses. DHSMV may cancel a license if the recipient committed fraud, or is not the person identified in the photo. DHSMV may also cancel a license if the recipient fails to pay any related fee, including vehicle or vessel registration taxes, or if payment is made by a dishonored check.

These provisions do not currently mention identification cards, only driver’s licenses.

Proposed Legislation

The bill amends s. 322.22, F.S., to authorize the Department of Highway Safety and Motor Vehicles to cancel an ID card obtained by fraud or if the cardholder fails to pay the correct fee or pays by a dishonored check. The bill also amends s. 322.27, F.S., to authorize DHSMV to suspend or revoke an ID card obtained by fraud. These changes are identical to the process allowed for driver’s licenses.

Lawful Breath, Blood, or Urine Test (Section 29)

Current Situation

In 2006 the Legislature removed provisions requiring DHSMV administrative hearing officers to consider the lawfulness of an arrest in any hearing to suspend a driver’s license. Under s. 322.2615(7)(b), F.S., the administrative review performed by a hearing officer is limited to

- Whether the law enforcement officer had probable cause to believe that the person whose license was suspended was driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or chemical or controlled substances.
- Whether the person whose license was suspended refused to submit to any such test after being requested to do so by a law enforcement officer or correctional officer.
- Whether the person whose license was suspended was told that if he or she refused to submit to such test his or her privilege to operate a motor vehicle would be suspended for a period of 1 year or, in the case of a second or subsequent refusal, for a period of 18 months.

In subsequent judicial decisions regarding this limitation, DHSMV has “contend[ed] that the lawfulness of the arrest is no longer an issue in the suspension process.”²³ However, courts have agreed with defendants who assert that s. 322.2615, F.S. must be read *in pari materia* with section 316.1932, F.S., which states that a lawful test “must be incident to a lawful arrest.”

According to the appellate courts that have reviewed this issue, the Legislature needs to be more specific if it truly intended to remove the language limiting the scope of a hearing officer’s review.

²⁰ Section 322.095(2)-(3), F.S.

²¹ *Agency Bill Analysis: HB 1479*, Department of Highway Safety and Motor Vehicles, March 14, 2009.

²² *Id.* See [ch. 95-326, Laws of Florida](#).

²³ *Department of Highway Safety and Motor Vehicles v. Pelham*, 979 So.2d 304, Fla.5th DCA (2008), at 306.

Proposed Legislation

The bill amends s. 322.2615, F.S., providing that, notwithstanding the provisions of s. 316.1932, F.S., requiring a test to be subsequent to a lawful arrest, a lawful breath, blood or urine test shall mean any test or test approved by the Florida Department of Law Enforcement.

Non-egregious Hearings (Section 31)

Current Situation

Section 322.271, F.S., creates a petition process by which some drivers may have their license re-instated after it has been denied, suspended, or revoked. This petition process requires the person to prove that the license revocation is a "serious hardship" preventing him or her from carrying out an occupation, trade, or employment, and that driving is "necessary to the proper support of the person or his or her family."²⁴ The person must also provide proof of attendance at a DHSMV-approved driver training program or DUI program substance abuse education course (including subsequent substance abuse treatment, if referred).²⁵ The person may also submit letters of recommendation from "respected business persons in the community."²⁶

The re-instatement process is not available to persons designated "habitual traffic offenders" under s. 322.27(5), F.S., or to persons convicted of certain DUI-related offenses, pursuant to ss. 322.28 and 322.2615, 322.261, and 316.193, F.S.²⁷

Proposed Legislation

The bill amends s. 322.271, F.S., allowing DHSMV to eliminate the hearing for non-egregious suspensions while still requiring the driver to complete all other necessary reinstatement provisions, including DUI substance abuse education and driver training programs.

"Non-egregious" suspensions are those which do not involve death or serious bodily injury, multiple DUI convictions, or a "second or subsequent suspension or revocation pursuant to the same provision of this chapter." DHSMV retains the right to hold a hearing for a re-instatement that might otherwise qualify as non-egregious, "based on the severity of the offense."

Proposed Legislation

Biennial Vessel Registration (Section 36)

Current Situation

The standard length of the registration period for vessels in Florida is 12 months, however s. 328.72(12)b), F.S., allows for an extended 24 month period, for boats registered to individuals (as opposed to "companies, corporations, governmental entities," and the registrations issued to dealers and manufacturers).²⁸ Because registration periods are based on the birth month of the registrant,²⁹ the actual length of a registration period can vary.

Proposed Legislation

The bill amends s. 328.72, F.S., to define "extended registration period" as a period of 24 months during which a vessel registration is valid. The bill also clarifies that vessel registration fees must be prorated on a monthly basis when the registration period is other than 12 or 24 months. Annual registrations are not to exceed 15 months and a biennial registration is not to exceed 27 months.

Minor Issues

Section 18 of the bill amends s. 320.203, F.S., to correct a cross-reference regarding s. 320.20(5), F.S.

²⁴ Section 322.271(2)(a), F.S.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ See s. 328.72(12)(c).2., F.S.

²⁹ Sections 328.72(1)(b) and (2)c.1., F.S.

Section 27 amends s. 322.201, F.S., deleting a requirement that records of crash reports or court records of convictions and the complete driving records of individuals must be duly certified by machine imprint for authentication to be received as evidence. An embossed stamp is no longer the industry standard for certifications.

Section 32 amends s. 322.28, F.S., to clarify that, in the event a person has two DUI offenses pending at the same time with different offense dates and is subsequently convicted for each violation, the court is to impose specified sanctions as if the first conviction preceded the date of the offense of the second conviction.

Section 34 of HB 1479 relates to commercial driver's licenses. The bill amends s. 322.64, F.S., to make technical changes conforming to current Federal Motor Carrier Safety Administration regulations.

Section 38 provides an effective date of October 1, 2009.

B. SECTION DIRECTORY:

- Section 1: Eliminates the DUI Programs Coordination Trust Fund; provides for disposition of balances and revenues in the Trust Fund; provides procedures for terminating the Trust Fund.
- Section 2: Amends section 17.61, F.S., to eliminate a reference to the DUI Programs Coordination Trust Fund.
- Section 3: Amends section 215.20, F.S., to eliminate a reference to the DUI Programs Coordination Trust Fund.
- Section 4: Amends section 316.126, F.S., directing motorists to slow down on a four-lane highway if unable to move over as required by the current "Move Over Act."
- Section 5: Amends section 316.2085, F.S., clarifying that a person under 16 may not operate a motorcycle or moped.
- Section 6: Amends section 316.251, F.S., revising a citation to the definition of "street rod."
- Section 7: Amends section 318.18, F.S., to increase the civil penalty late fee required in s. 318.18, F.S., from \$12 to \$16.
- Section 8: Amends section 319.14, F.S., for clarity, and to insert definitions of "custom vehicle" and "street rod." These definitions were formerly in section 320.0863, F.S.
- Section 9: Amends section 319.32, F.S., authorizing the Department to charge \$40 for each initial inspection and \$20 for each subsequent inspection if an application for a certificate of title for a vehicle is required to have a physical examination.
- Section 10: Amends section 319.40, F.S., authorizing the Department to issue electronic title certificates for vehicles, and to use e-mail as a notification method to owners.
- Section 11: Amends section 320.023, F.S., to clarify that voluntary contributions must be deposited into and distributed from the Motor Vehicle License Clearing Trust Fund.
- Section 12: Implements a settlement agreement reached as part of *Collier v. Dickinson*; provides that all natural persons holding a Florida driver's license, identification card or motor vehicle registration between June 1, 2000 and September 30, 2004 are eligible for a single \$1 credit on a new or renewed vehicle registration between July 1, 2009 and June 30, 2010.
- Section 13: Amends section 320.05, F.S., authorizing the Department to provide public access to the National Motor Vehicle Title Information System via an authorized connection with the American Association of Motor Vehicle Administrators, in order to obtain vehicle history and branding data on out-of-state vehicles.
- Section 14: Amends section 320.0607, F.S., correcting a \$2 application fee increase passed by the Legislature in 2007 (see 2007 House Bill 275).

- Section 15: Amends section 320.08, F.S., revising a citation to the definition of “street rod.”
- Section 16: Amends section 320.08048, F.S., to correct a \$2 application fee increase passed by the Legislature in 2007 (see 2007 House Bill 275).
- Section 17: Amends section 320.0863, F.S., removing definitions moved to section 319.14, F.S.
- Section 18: Amends section 320.203, F.S., to correct a cross-reference regarding s. 320.20(5), F.S.
- Section 19: Amends section 320.27, F.S., making clarifications; re-structuring the provision requiring evidence of a garage liability insurance policy or a general liability insurance policy; allowing the Department to sanction a dealer for failure to obtain an off-premises permit and for submitting a dishonored check to the Department; restructuring the manner in which proof of insurance is submitted by dealers without changing the limits of liability; establishing more detailed criteria for maintenance of coverage for the entire licensing period.
- Section 20: Amends section 320.642, F.S., to require a franchised motor vehicle dealer seeking to open a new point of sale or seeking a relocation of their current franchise to pay a \$75 fee and a service charge of \$2.50 for each publication to cover the cost of publication in the Florida Administrative Weekly.
- Section 21: Amends section 320.77, F.S., specifying the manner in which proof of insurance is submitted by mobile home dealers; establishing detailed criteria for maintenance of coverage for the entire licensing period.
- Section 22: Amends section 320.95, F.S., permitting the Department to use e-mail to notify vehicle owners and registrants, in lieu of the U.S. Postal Service.
- Section 23: Amends section 322.03, F.S., phasing out "valid in Florida only" licenses; allowing a part-time resident issued a "valid in Florida only" license to continue to hold such license until the next regularly scheduled renewal. Licenses identified as "valid in Florida only" may not be issued or renewed effective July 1, 2009.
- Section 24: Amends section 322.051, F.S., correcting a cross-reference to driver's license fees in section 322.21, F.S.
- Section 25: Amends section 322.08, F.S., specifying that the Department shall not issue a driver license or ID card to anyone holding a valid driver license or ID card issued by another state.
- Section 26: Amends section 322.095, F.S., eliminating the requirement that all instructors teaching Traffic Law and Substance Abuse education courses must be certified by the Department.
- Section 27: Amends section 322.201, F.S., deleting the requirement that records of crash reports or court records of convictions and the complete driving records of individuals must be duly certified by machine imprint for authentication to be received as evidence.
- Section 28: Amends section 322.22, F.S., authorizing the Department to cancel an ID card obtained by fraud or if the cardholder fails to pay the correct fee or pays by a dishonored check;
- Section 29: Amends section 322.2615, F.S., providing that notwithstanding the provisions of s. 316.1932, F.S., a lawful breath, blood or urine test shall mean any test or test approved by the Florida Department of Law Enforcement.
- Section 30: Amends section 322.27, F.S., authorizing the Department to suspend or revoke an ID card obtained by fraud.
- Section 31: Amends section 322.271, F.S., allowing the Department to eliminate the hearing for non-egregious suspensions while still requiring the driver to complete all other necessary reinstatement provisions.
- Section 32: Amends section 322.28, F.S., to clarify that, in the event a person has two DUI offenses pending at the same time with different offense dates and is subsequently convicted for

each violation, the court is to impose specified sanctions as if the first conviction preceded the date of the offense of the second conviction.

- Section 33: Amends section 322.293, F.S., to direct certain revenues to the Highway Safety Operating Trust Fund for use by both DUI programs and general operations of the Department.
- Section 34: Amends section 322.64, F.S., to make technical corrections to the disqualification statute as it relates to commercial licenses and refusal to submit to BAC testing.
- Section 35: Amends section 328.30, F.S., authorizing the Department to issue electronic title certificates for vessels, and to use e-mail as a notification method to owners.
- Section 36: Amends section 328.72, F.S., to define "extended registration period" as a period of 24 months during which a vessel registration is valid; allowing vessel registration fees to be prorated on a monthly basis when the registration period is other than 12 months or 24 months.
- Section 37: Amends section 328.80, F.S., permitting the Department to use e-mail to notify vessel owners and registrants, in lieu of the U.S. Postal Service.
- Section 38: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Amount Year 1 <u>FY 2009-10</u>	Amount Year 2 <u>FY 2010-11</u>	Amount Year 3 <u>FY 2011-12</u>
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*Non-Recurring or First Year
Start Up Effects:*

Section 12: License Tax Surcharge General Revenue Fund:	<u>(\$10,400,000)</u>	<u>\$ 0</u>	<u>\$ 0</u>
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This reflects redirecting revenue authorized per s. 320.08046, F.S., which is currently designated to the General Revenue Fund, to fund the \$1 credit per implementation of the litigation settlement provisions of Collier versus Dickinson for the period July 1, 2009 through June 30, 2010.

*Recurring or Annualized
Continuation Effects:*

Section 9: General Revenue Fund: Assess \$20 Subsequent Inspection Fee	\$ 75,000	\$ 100,000	\$ 100,500
	-----	-----	-----
Total General Revenue Fund	<u>\$ 75,000</u>	<u>\$ 100,000</u>	<u>\$ 100,500</u>

Reflected above is the impact from assessing a \$20 fee on subsequent inspections of rebuilt vehicles. An effective date of October 1, 2009 and 5,013 re-inspections is assumed for FY 2009-2010.

Section 33:

Highway Safety Operating TF:			
\$12 DUI Assessment Fee	\$ 803,635	\$ 803,635	\$ 807,653
	-----	-----	-----
Subtotal–HSOTF	\$ 803,635	\$ 803,635	\$ 807,653
DUI Programs Coordination TF:			
\$12 DUI Assessment Fee	(\$ 803,635)	(\$ 803,635)	(\$ 807,653)
	-----	-----	-----
Subtotal–DUI TF	(\$ 803,635)	(\$ 803,635)	(\$ 807,653)
Total	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 0</u>

This reflects the impact from directing the \$12 DUI assessment fee from the DUI Programs Coordination Trust Fund to the Highway Safety Operating Trust Fund effective October 1, 2009. This change will align program revenues with program expenditures within the Highway Safety Operating Trust Fund.

Section 13:

Highway Safety Operating TF:

Revenues collected from fees assessed from providing a public access title information system will be offset by the cost of administering this program.

Section 20:

Highway Safety Operating TF:

Publication and service fees collected from motor vehicle dealerships establishing an additional dealership location or relocating an establishing an existing dealership will be used to offset costs of publishing administrative notices.

	Amount Year 1 <u>FY 2009-10</u>	Amount Year 2 <u>FY 2010-11</u>	Amount Year 3 <u>FY 2011-12</u>
<i>Summary (Total Revenue)</i>			
General Revenue Fund:	(\$10,325,000)	\$ 100,000	\$ 100,500
Highway Safety Operating TF:	(\$ 803,635)	(\$ 803,635)	(\$ 807,653)
DUI Programs Coordination TF:	<u>\$ 803,635</u>	<u>\$ 803,635</u>	<u>\$ 807,653</u>
Total Revenues:	<u>(\$10,325,000)</u>	<u>\$ 100,000</u>	<u>\$ 100,500</u>

2. Expenditures:

	Amount Year 1 <u>FY 2009-10</u>	Amount Year 2 <u>FY 2010-11</u>	Amount Year 3 <u>FY 2011-12</u>
<i>Non-Recurring or First Year Start Up Effects:</i>			
Contracted Services:			
Highway Safety Operating TF	<u>\$ 99,000</u>	<u>\$ 0</u>	<u>\$ 0</u>

This bill will require 1,320 hours of contracted programming at a cost of \$75 per hour to Driver License and Motor Vehicle software systems to implement. Cost will be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Floridians holding a driver's license, identification card, or motor vehicle registration that was valid between June 1, 2000, and September 30, 2004 may elect to receive a \$1 reduction on a new or renewed motor vehicle registration between July 1, 2009 and June 30, 2010.

Offenders who fail to pay civil fines in the prescribed timeframe will face a late fee of \$16, rather than the current \$12 late fee.

DHSMV is authorized to charge an additional \$20 for additional inspections of rebuilt cars or other vehicles that require a physical inspection, if the owner is unable to provide suitable information during the first inspection. Approximately 5,000 vehicles needed such an additional inspection in Fiscal Year 2008-2009.³⁰

D. FISCAL COMMENTS:

The bill allows DHSMV to redirect funds from the DUI Programs Coordination Trust Fund to the Highway Safety Operating Trust Fund, allowing these funds to be used not only for DUI Programs but also for the general operations of the Department.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not contain any additional grants of rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

E-mail collection

Several sections of the bill allow DHSMV to collect email address from individuals registering a vehicle or vessel, for use as an additional notification method.

Section 119.0712(2), F.S., provides that certain personal identifying information held by DHSMV and "contained in a motor vehicle record," is exempt from the public records provisions of s. 119.07, F.S. As a result, information such as an individual's social security number, name, address, phone number, and other information is not readily available from DHSMV. This section does have a number of exceptions, however. Among other provisions, personal information can be released to:

- motor vehicle manufacturers for purposes of recall notification and other performance issues,

³⁰ Agency Bill Analysis: HB 1479, Department of Highway Safety and Motor Vehicles, March 14, 2009.

- government agencies, including any court or law enforcement agency,
- certified process servers, to accomplish service,
- insurers, in connection with claims investigation or fraud,
- any licensed private investigative agency, or
- to any “legitimate business” for use in the “normal course of business,” but only to verify information supplied by an individual to the business, or to correct information given by the individual, to prevent fraud, or collect a debt.

It is not clear whether or not an email collected under any of the provisions of the bill would be “contained in a motor vehicle record.” If the email addresses are considered non-exempt records, they will be readily available to legitimate online marketing services as well as businesses that engage in web-based activities such as “spamming” or “phishing.” If not exempt from disclosure, these addresses could also be available to any private individual wishing to discover the email address of any other individual who has registered a vehicle or vessel in Florida and agreed to supply an email address to DHSMV.

Strike-All Amendment

The sponsor of the bill intends to file a strike-all amendment. This amendment removes several sections of the bill described in this analysis. The strike-all retains the following sections of the current bill, with little or no change:

- Making a clarification to the Move Over Act in s. 316.126, F.S.,
- Authorizing DHSMV to collect and use e-mail addresses for a variety of purposes,
- Authorizing voluntary contributions to be deposited into the Motor Vehicle License Clearing Trust Fund,
- Modifications to the definition of ‘motorcycle’ in s. 320.01, F.S.,
- Phasing out “Valid in Florida Only” driver’s licenses and ensuring that a person may have only one REAL ID-compliant license at a time,
- Eliminating the requirement that certain instructors be certified by DHSMV,
- Eliminating an archaic machine-embossing requirement for certain documents,
- Amending s. 322.2615, F.S., to declare that a ‘lawful test’ is any test approved by FDLE, for purposes of DHSMV administrative hearings,
- Allowing DHSMV to eliminate administrative hearings for non-egregious license suspensions,
- Amending Commercial Driver’s License statutes to comply with federal requirements, and
- Making minor technical changes where needed.

The strike-all also includes new sections. These provisions:

- Define “mini trucks,” authorize their use in a fashion identical to “low-speed vehicles,” and authorize DHSMV to create unique license plates for them,
- Require motorcycle license tags to be permanently affixed to the vehicle, and prohibiting any device or method of concealing or obscuring the tag.
- Require driver improvement school for any driver who is in 3 at-fault crashes in 3 years, and
- Allow DHSMV to notify driver’s license holders eligible for renewal via email.

V. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES